

Message Text

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ORIGIN NEA-09

INFO OCT-01 EUR-12 ISO-00 L-02 PM-03 EA-06 CIAE-00 INR-07

NSAE-00 RSC-01 /041 R

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DOD/NJAG:RLFRUCHTERMAN

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R 220055Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY JIDDA

AMEMBASSY KUWAIT

INFO AMEMBASSY MANAMA

AMEMBASSY LONDON

CNO WASHDC

CINCUSNAVEUR

CINCPAC HONOLULU HI

CINCPACFLT

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CINCUSNAVEUR ALSO FOR POLAD, CINCPAC ALSO FOR POLAD

E.O. 11652: N/A

TAGS: CFED, MILI, KU

SUBJECT: VISIT TO KUWAIT BY U.S. NAVAL VESSELS

REFS: (A) KUWAIT 4796, (B) KUWAIT 4941, (C) CINCUSNAVEUR
191958Z NOV 74, (D) STATE 255774 (ALL NOTAL)

1. NAVY UNABLE TO COMPLY WITH GOK LAW REQUIRING DISPLAY OF
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KUWAITI FLAG AT FORE OF FOREIGN VESSELS IN KUWAIT PORT

WATERS (REFTELS A, B). ART. 1058, NAVY REGULATIONS, 1973, PROVIDES:

"NO FLAGS OR PENNANTS, OTHER THAN AS PRESCRIBED BY THESE REGULATIONS OR AS MAY BE DIRECTED BY THE SECRETARY OF THE NAVY, SHALL BE DISPLAYED FROM A SHIP OR CRAFT OF THE NAVY...AS AN HONOR TO A NATION OR INDIVIDUAL OR TO INDICATE THE PRESENCE OF ANY INDIVIDUAL."

RECENT USN SURVEY OF LEADING MARITIME NATIONS HAS SHOWN THAT MOST NORMALLY ACCORD ONLY CEREMONIES AND HONORS AS OUTLINED IN ART. 1058. REASON FOR THIS PRACTICE IS THAT WAR VESSELS HAVE SPECIAL RIGHTS UNDER INTERNATIONAL LAW (E.G. IMMUNITY FROM BEING BOARDED WITHOUT PERMISSION, EVEN IN INTERNAL WATERS). FURTHER, THE APPLICATION TO SUCH VESSELS OF ANY MUNICIPAL LAW WHICH WOULD REQUIRE THE FLYING OF THE FLAG OF OTHER THAN THE U.S. WOULD AMOUNT TO

AN UNACCEPTABLE ATTEMPT TO EXERCISE TERRITORIAL JURISDICTION OVER MILITARY VESSELS. IN ADDITION, NAVY CONCERNED OVER BAD PRECEDENT OF SUBMITTING TO UNILATERAL HOST STATE REGULATION OF MATTERS PERTAINING SO CLOSELY TO INTERNAL ADMINISTRATION OF THE VESSEL.

2. MILITARY SEALIFT COMMAND (MSC) OPERATES VESSELS WHICH ARE "ACTIVE STATUS IN SERVICE," VESSELS (DESIGNATED UNITED STATES NAVAL SHIP - USNS) AND VESSELS ON CHARTER. IN CASE OF FALCON LADY, SHE IS A DEMISE (BAREBOAT) CHARTER TO THE U.S. SUCH CHARTERS ARE CONSIDERED TO BE OWNED, PRO HAC VICE, AND OPERATED BY U.S. AND TO BE IN THE SAME CATEGORY AS USNS VESSELS. FYI. UPON PROMULGATION OF THE NEXT CHANGE TO THE U.S. NAVY REGULATIONS, FALCON LADY AND THE REMAINING FALCON TANKERS WILL IN FACT BE DESIGNATED USNS AND WILL BE RENAMED. END FYI. AS TO THESE VESSELS IT IS CONSIDERED THAT THE MERCHANT MARINE PRACTICE OF FLYING FOREIGN FLAGS IN FOREIGN PORTS IS INCONSISTENT WITH BOTH THE STATUS AND MISSION OF THE MSC "PUBLIC VESSELS" INASMUCH AS FOLLOWING THE PRACTICE COULD LEAD TO THE ERRONEOUS IMPRESSION THAT THE VESSELS ARE MERCHANT VESSELS AND NOT PUBLIC VESSELS.

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3. ON 14 AUGUST 1947, SECNAV, AT REQUEST OF SECSTATE, AUTHORIZED EXCEPTION TO U.S. NAVY REGULATIONS WHICH PERMITTED U.S. NAVY TANKERS TO FLY SAUDI ARABIAN FLAG AT FORE WHEN ENTERING PORT OF RAS TANURA. HOWEVER, THIS WAS CASE OF INFORMAL, MUTUAL AGREEMENT BETWEEN NAVY AND HOST STATE APPLICABLE ONLY TO TANKERS AND NOT, LIKE HERE, ATTEMPT TO IMPOSE FORMAL, UNILATERAL REGULATION OF ALL USN VESSELS. NAVY RECEIVED QUID PRO QUO OF EXEMPTION OF

TANKERS FROM DIPLOMATIC CLEARANCE WHEN ENTERING PORT.
CONCESSION MADE ON UNDERSTANDING IT WAS ACT OF COURTESY
TOWARD SAUDI GOVERNMENT, IMPLYING NOTHING ABOUT SAUDI
RIGHT TO REGULATE VESSELS' INTERNAL AFFAIRS.

4. IN VIEW OF ABOVE, DEPARTMENT SEES NO WAY IN WHICH
U.S. CAN ACCEDE TO KUWAIT LAW AS IT PURPORTS TO APPLY TO
U.S. NAVY VESSELS AND "PUBLIC VESSELS" OF THE U.S.

5. SINCE REF (C) AND (D) HOLD ALL PORT VISITS TO KUWAIT
IN ABEYANCE, YOU ARE REQUESTED TO APPROACH THE GOK ON AN
URGENT BASIS ON THIS MATTER DRAWING UPON THE NON FYI
PORTIONS OF PARAS 1, 2, 3 AND 4, EMPHASIZING THE FOLLOWING
POINTS:

- A. THE U.S. IS DESIROUS OF CONTINUING THE PRACTICE
OF MAKING PORT VISITS TO KUWAIT, AND
- B. THE KUWAITI LAW DOES NOT REFLECT THE CUSTOMARY

PRACTICE OF THE COMMUNITY OF NATIONS.
REQUEST YOU REPORT GOK REACTION.

6. FOR JIDDA: WOULD APPRECIATE YOUR COMMENTS ON FEASI-
BILITY OUR NOW SEEKING TO DISCONTINUE ANOMALOUS PRACTICE
OF FLYING SAUDI FLAG AT FORE OF U.S. NAVY TANKERS
ENTERING RAS TANURA. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PORT CALLS, MILITARY VISITS
Control Number: n/a
Copy: SINGLE
Draft Date: 22 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: johnsorg
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE014687
Document Source: CORE
Document Unique ID: 00
Drafter: SICK, NEA/ARP:GLUMSDEN, L/NEA:JROHWER:DS
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750023-0913
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750129/aaaaazvv.tel
Line Count: 140
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 KUWAIT 4796, 75 KUWAIT 4941
Review Action: RELEASED, APPROVED
Review Authority: johnsorg
Review Comment: n/a
Review Content Flags:
Review Date: 25 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <25 JUN 2003 by ShawDG>; APPROVED <04 NOV 2003 by johnsorg>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: VISIT TO KUWAIT BY U.S. NAVAL VESSELS
TAGS: CFED, MILI, KU
To: JIDDA KUWAIT
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006